

ENGROSSED  
COMMITTEE SUBSTITUTE  
FOR  
COMMITTEE SUBSTITUTE  
FOR

**Senate Bill No. 109**

(By Senators Blair and Leonhardt)

---

[Originating in the Committee on the Judiciary;  
reported February 20, 2015.]

---

A BILL to amend and reenact §16-2-11 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §16-2-16, all relating to local indoor smoking prohibition; exempting certain veterans' organizations from local indoor smoking prohibition; and establishing a procedure for certain establishments to apply for exemption from local indoor smoking prohibition.

**[ENG. COM. SUB. FOR COM. SUB. FOR S. B. NO. 109]**

*Be it enacted by the Legislature of West Virginia:*

That §16-2-11 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that said code be amended by adding thereto a new section, designated §16-2-16, all to read as follows:

**ARTICLE 2. LOCAL BOARDS OF HEALTH.**

**§16-2-11. Local board of health; powers and duties; exemption of veterans' organizations and active duty United States Military organizations from indoor smoking regulations.**

1           (a) Each local board of health created, established and  
2 operated pursuant to the provisions of this article shall:

3           (1) Provide the following basic public health services and  
4 programs in accordance with state public health performance-based  
5 standards:

6           (A) Community health promotion, including assessing and  
7 reporting community health needs to improve health status,  
8 facilitating community partnerships, including identifying the

**[ENG. COM. SUB. FOR COM. SUB. FOR S. B. NO. 109]**

1 community's priority health needs, mobilization of a community  
2 around identified priorities and monitoring the progress of  
3 community health education services;

4 (B) Environmental health protection, including the  
5 promoting and maintaining of clean and safe air, water, food and  
6 facilities and the administering of public health laws, as specified  
7 by the commissioner, as to general sanitation, the sanitation of  
8 public drinking water, sewage and wastewater, food and milk and  
9 the sanitation of housing, institutions and recreation; and

10 (C) Communicable or reportable disease prevention and  
11 control, including disease surveillance, case investigation and  
12 follow-up, outbreak investigation, response to epidemics and  
13 prevention and control of rabies, sexually transmitted diseases,  
14 vaccine preventable diseases, HIV/AIDS, tuberculosis and other  
15 communicable and reportable diseases;

16 (2) Appoint a local health officer to serve at the will and  
17 pleasure of the local board of health, with approval of the  
18 commissioner;

**[ENG. COM. SUB. FOR COM. SUB. FOR S. B. NO. 109]**

1           (3) Submit a general plan of operation to the commissioner  
2 for approval if it receives any state or federal money for health  
3 purposes. This program plan shall be submitted annually and  
4 comply with provisions of the local board of health standards  
5 administrative rule;

6           (4) Provide equipment and facilities for the local health  
7 department that are in compliance with federal and state law;

8           (5) Permit the commissioner to act by and through it, as  
9 needed. The commissioner may enforce all public health laws of  
10 this state, the rules and orders of the secretary, any county  
11 commission orders or municipal ordinances of the board's service  
12 area relating to public health and the rules and orders of the local  
13 board within the service area of a local board. The commissioner  
14 may enforce these laws, rules and orders when, in the opinion of the  
15 commissioner, a public health emergency exists or when the local  
16 board fails or refuses to enforce public health laws and rules  
17 necessary to prevent and control the spread of a communicable or  
18 reportable disease dangerous to the public health. The expenses

**[ENG. COM. SUB. FOR COM. SUB. FOR S. B. NO. 109]**

1 incurred shall be charged against the counties or municipalities  
2 concerned;

3       (6) Deposit all moneys and collected fees into an account  
4 designated for local board of health purposes. The moneys for a  
5 municipal board of health shall be deposited with the municipal  
6 treasury in the service area. The moneys for a county board of  
7 health shall be deposited with the county treasury in the service  
8 area. The moneys for a combined local board of health shall be  
9 deposited in an account as designated in the plan of combination:  
10 *Provided*, That nothing contained in this subsection is intended to  
11 conflict with the provisions of article one of this chapter;

12       (7) Submit vouchers or other instruments approved by the  
13 board and signed by the local health officer or designated  
14 representative to the county or municipal treasurer for payment of  
15 necessary and reasonable expenditures from the county or  
16 municipal public health funds: *Provided*, That a combined local  
17 board of health shall draw upon its public health funds account in  
18 the manner designated in the plan of combination;

**[ENG. COM. SUB. FOR COM. SUB. FOR S. B. NO. 109]**

1           (8) Participate in audits, be in compliance with tax  
2 procedures required by the state and annually develop a budget for  
3 the next fiscal year;

4           (9) Perform public health duties assigned by order of a  
5 county commission or by municipal ordinance consistent with state  
6 public health laws; and

7           (10) Enforce the public health laws of this state and any  
8 other laws of this state applicable to the local board.

9           (b) Each local board of health created, established and  
10 operated pursuant to the provisions of this article may:

11           (1) Provide primary care services, clinical and categorical  
12 programs, and enhanced public health services;

13           (2) Employ or contract with any technical, administrative,  
14 clerical or other persons to serve as needed and at the will and  
15 pleasure of the local board of health. Staff and any contractors  
16 providing services to the board shall comply with applicable West  
17 Virginia certification and licensure requirements. Eligible staff  
18 employed by the board shall be covered by the rules of the Division

**[ENG. COM. SUB. FOR COM. SUB. FOR S. B. NO. 109]**

1 of Personnel, under section six, article ten, chapter twenty-nine of  
2 this code. However, any local board of health may, in the  
3 alternative and with the consent and approval of the appointing  
4 authority, establish and adopt a merit system for its eligible  
5 employees. The merit system may be similar to the state merit  
6 system and may be established by the local board by its order,  
7 subject to the approval of the appointing authority, adopting and  
8 making applicable to the local health department all, or any portion,  
9 of any order, rule, standard or compensation rate in effect in the  
10 state merit system as may be desired and as is properly applicable;

11 (3) Adopt, ~~and promulgate and from time to time~~ propose  
12 and amend rules consistent with state public health laws and the  
13 rules of the West Virginia State Department of Health and Human  
14 Resources that are necessary and proper for the protection of the  
15 general health of the service area and the prevention of the  
16 introduction, propagation and spread of disease. All rules shall be  
17 filed with the clerk of the county commission, or the clerk or the  
18 recorder of the municipality, or both, and shall be kept by the clerk

**[ENG. COM. SUB. FOR COM. SUB. FOR S. B. NO. 109]**

1 or recording officer in a separate book as public records;

2           (4) Accept, receive and receipt for money or property from  
3 any federal, state or local governmental agency, from any other  
4 public source or from any private source to be used for public  
5 health purposes or for the establishment or construction of public  
6 health facilities;

7           (5) Assess, charge and collect fees for permits and licenses  
8 for the provision of public health services: *Provided*, That permits  
9 and licenses required for agricultural activities may not be assessed,  
10 charged or collected: *Provided, however*, That a local board of  
11 health may assess, charge and collect all of the expenses of  
12 inspection of the physical plant and facilities of any distributor,  
13 producer or pasteurizer of milk whose milk distribution, production  
14 or pasteurization facilities are located outside this state, but who  
15 sells or distributes in the state, or transports, causes or permits to be  
16 transported into this state, milk or milk products for resale, use or  
17 consumption in the state and in the service area of the local board  
18 of health. A local board of health may not assess, charge and collect



**[ENG. COM. SUB. FOR COM. SUB. FOR S. B. NO. 109]**

1 the expenses of inspection if the physical plant and facilities are  
2 regularly inspected by another agency of this state or its  
3 governmental subdivisions, or by an agency of another state or its  
4 governmental subdivisions certified as an approved inspection  
5 agency by the commissioner. No more than one local board of  
6 health may act as the regular inspection agency of the physical plant  
7 and facilities; when two or more include an inspection of the  
8 physical plant and facilities in a regular schedule, the commissioner  
9 shall designate one as the regular inspection agency;

10 (6) Assess, charge and collect fees for services provided by  
11 the local health department: *Provided*, That fees for services shall  
12 be submitted to and approved by the commissioner;

13 (7) Contract for payment with any municipality, county or  
14 board of education for the provision of local health services or for  
15 the use of public health facilities. Any contract shall be in writing  
16 and permit provision of services or use of facilities for a period not  
17 to exceed one fiscal year. The written contract may include  
18 provisions for annual renewal by agreement of the parties; and

**[ENG. COM. SUB. FOR COM. SUB. FOR S. B. NO. 109]**

1           (8) Retain and make available child safety car seats, collect  
2 rental and security deposit fees for the expenses of retaining and  
3 making available child safety car seats, and conduct public  
4 education activities concerning the use and preventing the misuse  
5 of child safety car seats: *Provided*, That this subsection is not  
6 intended to conflict with the provisions of section forty-six, article  
7 fifteen, chapter seventeen-c of this code: *Provided, however*, That  
8 any local board of health offering a child safety car seat program or  
9 employee or agent of a local board of health is immune from civil  
10 or criminal liability in any action relating to the improper use,  
11 malfunction or inadequate maintenance of the child safety car seat  
12 and in any action relating to the improper placement, maintenance  
13 or securing of a child in a child safety car seat.

14           (c) The local boards of health are charged with protecting  
15 the health and safety, as well as promoting the interests, of the  
16 citizens of West Virginia. All state funds appropriated by the  
17 Legislature for the benefit of local boards of health shall be used for  
18 provision of basic public health services.

[ENG. COM. SUB. FOR COM. SUB. FOR S. B. NO. 109]

1 (d) Notwithstanding any other provision of this article, a  
2 veterans' organization that is exempt from federal income tax under  
3 section 501(c)(19) of the Internal Revenue Code is exempt from  
4 rules restricting smoking in indoor spaces which are adopted,  
5 promulgated or enforced by local boards of health, as long as the  
6 area where smoking is permitted is restricted to persons age 18  
7 years or older: *Provided*, That each entrance to the facility shall  
8 have posted a sign of no less than eighteen inches by twenty-four  
9 inches, which says "DANGER: THIS PREMISES CONTAINS  
10 TOBACCO SMOKE."

11 **§16-2-16. Procedure for exempting certain establishments from**  
12 **local smoking prohibition;**  
13 **timelines.**

14 (a) For the purposes of this section, "smoking" means  
15 inhaling, exhaling, burning or carrying any lighted cigar, cigarette,  
16 pipe or other lighted smoking device for burning tobacco or any  
17 other plant. "Smoking" does not include the burning of incense in  
18 a religious ceremony.

**[ENG. COM. SUB. FOR COM. SUB. FOR S. B. NO. 109]**

1           (b) An establishment may be exempted from the local  
2 smoking prohibitions if it meets the following requirements:

3           (1) The establishment is: (A) A pari-mutuel racing facility  
4 or a licensed racetrack, as both are defined in section three, article  
5 twenty-two-a, chapter twenty-nine of this code; (B) a restricted  
6 access adult-only facility, as that term is defined in section three  
7 hundred twenty-eight, article twenty-two-b, chapter twenty-nine of  
8 this code; (C) a fraternal beneficiary society that is exempt from  
9 federal income tax under section 501(c)(8) of the Internal Revenue  
10 Code of 1986, as amended; or (D) a domestic fraternal society that  
11 is exempt from federal income tax under section 501(c)(10) of the  
12 Internal Revenue Code;

13           (2) The establishment has a permanent ventilation system  
14 that ensures a minimum air exchange of six times per hour  
15 throughout the indoor space and a minimum air exchange of twelve  
16 times per hour in the indoor space that serves food, unless the food  
17 space is designated nonsmoking;

18           (3) The smoking area will be restricted to persons twenty-

**[ENG. COM. SUB. FOR COM. SUB. FOR S. B. NO. 109]**

1 one years of age or older;

2 (4) At least ten percent of the indoor space of the area will  
3 be designated a nonsmoking area; and

4 (5) Each entrance to the facility shall have posted a sign of  
5 no less than eighteen inches by twenty-four inches, which says  
6 “DANGER: THIS PREMISES CONTAINS TOBACCO SMOKE.”

7 (c) If an establishment meets the requirements set forth in  
8 subsection (b) of this section, then the establishment may request an  
9 exemption from the local board of health where the establishment  
10 is located by submitting a written request to the local board of  
11 health. The local board of health shall review the request for an  
12 exemption and determine if the requirements set forth in subsection  
13 (b) of this section were met. Within thirty days of the receipt of the  
14 request for an exemption, the local board of health shall submit a  
15 certificate of finding to the county commission of the county where  
16 the local board of health is located.

17 (d) Within thirty days of the receipt of the certificate of  
18 finding, the county commission may review and vote on the request

**[ENG. COM. SUB. FOR COM. SUB. FOR S. B. NO. 109]**

- 1 for an exemption, only after a public hearing on the proposed
- 2 exemption is held, in a regular or special session.